

Vickers



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ceimic Corporation

File: B-236829

Date: December 21, 1989

DIGEST

Execution of contract modification for additional level-of-effort hours necessary for incumbent to complete ongoing research projects is not objectionable where agency has reasonably determined that a competitive procurement for the requirement is not feasible since only incumbent can perform in required timeframe.

DECISION

Ceimic Corporation protests the modification of a contract awarded to Science Applications International Corporation (SAIC) by the Environmental Protection Agency (EPA). The modification was for an additional 18,653-hour level-of-effort increase for on-site analysis, monitoring and research services at the Environmental Research Laboratory, Narragansett, Rhode Island.

Ceimic states that it is fully qualified and could perform the work covered by the modification and therefore argues that the additional requirement should have been the subject of a competitive procurement.

This additional requirement was synopsisized in the Commerce Business Daily (CBD) on June 22, 1989. The notice indicated that EPA intended to increase the level-of-effort under SAIC's contract but stated that interested sources could submit documentation of their qualifications. According to the agency, it received several inquiries in response to the notice. It appears that all of the firms but Ceimic withdrew their expressions of interest. The agency, without requesting further information from Ceimic, notified that firm on August 29 that it intended to modify the SAIC contract based on its conclusion that no other firm could supply these services for the short term time needed.

047346/140264

EPA's decision to add the requirement to SAIC's existing contract was supported by a justification citing the authority of 41 U.S.C. § 253(c)(1) (Supp. IV 1986). That provision permits a noncompetitive award where the property or services are available from only one known responsible source and no other type of property or services will satisfy the agency.

The justification noted that SAIC currently holds a cost-plus-fixed-fee, level-of-effort contract to provide physical, chemical and biological technical support services on site at Narragansett for water quality and toxic research projects. The justification states that the level-of-effort increase is needed for a short duration of approximately 3 months to complete ongoing studies during the first option period under the SAIC contract. At the end of the 3-month period to be covered by the contract modification, EPA was to exercise the second option under the SAIC contract which includes a level-of-effort sufficient to complete all of the studies and is to run until September 30, 1990.

The justification further states that the increased hours are necessary to meet recently expanded reporting requirements under the Water Quality Act of 1987, 33 U.S.C.A. § 1254 et seq. (West Supp. 1989). The justification notes that while other firms have the general qualifications and capabilities to perform this type of service, given the short duration of the work here, the intricate relationship between the work to be covered by the modification and the existing ongoing work, only SAIC can perform without undue delay or jeopardizing ongoing research projects. According to the justification, SAIC has developed extensive expertise during the contract period in working with the data bases and techniques required in the projects, has an assembled research team of consultants and subcontractors and has developed the current ability to continue the technologically difficult tasks and coordinate the result with previous findings. If a different contractor were selected, the justification concludes, time would be lost in training the contractor, transferring technical files and completing new subcontractor agreements.

The Competition in Contracting Act of 1984 (CICA) permits an agency to use noncompetitive procedures where there is only one responsible source that can satisfy the government's needs. 41 U.S.C. § 253(c)(1). Because the overriding mandate of CICA is for "full and open competition" in government procurements, 41 U.S.C. § 253(a), we will closely scrutinize sole-source procurement actions under the

exception to that mandate provided by 41 U.S.C. § 253(c)(1); Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. Where, however, the agency has substantially complied with the procedural requirements of CICA for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requisite CBD notice to solicit offers, we will not object to the sole-source action unless it is shown that there is no reasonable basis for it. In sum, a sole-source is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. C&S Antennas, Inc., 66 Comp. Gen. 254 (1987), 87-1 CPD ¶ 161.

While the protester seems to object in general to the EPA action it does not challenge the specific grounds cited by the EPA as justifying its noncompetitive procurement action. It does, however, specifically argue that its response to the CBD notice was not properly considered.

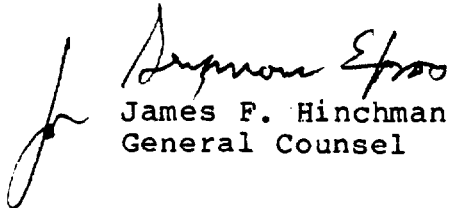
We have carefully reviewed the record and we find EPA has adequately justified its action. Because of the ongoing nature of the tasks assigned to SAIC, we have no basis upon which to disagree with the agency's conclusion that it simply is not feasible that another contractor could complete the work in the required timeframe in view of the time that would be lost in the learning curve, the transfer of files and the need for new subcontractor agreements. See Eaton Corp., B-235603, Sept. 18, 1989, 89-2 CPD ¶ 238.

The record does not describe the evaluation EPA made of the responses it received other than to state that it spoke with five respondents and they withdrew their requests. Ceimic denies that it withdrew its interest. EPA did not send a written response to any of the firms nor did it document its evaluation and therefore, the record is unclear as to the extent of the evaluation and what information was conveyed to the firms.

Nevertheless, it does not appear that Ceimic's response to the CBD notice was sufficient. The notice required interested sources to "submit documentation" to "demonstrate" that the source has the necessary staff and scientific experts immediately available, as well as experience in the area and an in-place management plan. The protester's response consisted of a two-page letter which contained a general description of the firm and an offer to supply additional information on request. This was clearly not what the CBD notice asked for in a response. It called for a documented submission which showed that the source could perform the required services immediately. Under the

circumstances, we do not think it was reasonable for the protester to expect that it would have multiple opportunities to document its qualifications. See North American Biologicals, Inc., B-234583, May 22, 1989, 89-1 CPD ¶ 487.

The protest is denied.



James F. Hinchman
General Counsel